IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

C.W.P. No.1365 of 1997
Date of Decision: 18.12.2007

Pritam Dass Mohtmin .....Petitioner

Vs.

State of Punjab and others ...Respondents

....

CORAM : HON'BLE MR.JUSTICE UMA NATH SINGH
HON'BLE MR.JUSTICE RAJIVE BHALLA

****

Present : Mr.S.C. Nagpal, Advocate for the petitioner.
Mr.Anupam Gupta, Advocate.
Mr.Vinish Singla, Advocate for respondent no.3.

...

RAJIVE BHALLA, J

This order shall dispose of CWP Nos.1365 of 1997 (Pritam Dass Mohtmin V. State of Punjab etc.) and 11772 of 2005 (Hardayal Singh Sohal V. State of Punjab and others), as they arise from and impugn the same acquisition proceedings.

Sh.Pritam Dass Mohtmin, the petitioner, in CWP No.1365 of 1997, despite dismissal of his earlier petition, namely CWP No.7387 of 1976, once again, impugns the proceedings for acquisition.

The petitioner in CWP No.11772 of 2005, claims to be a lessee from Pritam Dass and pleads that as the Improvement Trust did not take possession, he constructed a house after obtaining the permission of the Municipal Committee, therefore, his land be released from acquisition.

A narrative of facts leading upto the filing of the present petition would be appropriate. The Improvement Trust, Ropar, proposed to acquire 100 acres of land, for construction of Giani Zail Singh Nagar. The

notice under Section 36 of the Punjab Town Improvement Trust Act, 1928 (hereinafter referred to as `the Act') was issued on 11.8.1973. This was followed by a notice under Section 42 of the Act dated 17.12.1974 and an award dated 1.5.1976. The proceedings were impugned by Balwant Singh and Pritam Dass (the petitioner in CWP No.1365 of 1997) by way of C.W.P. No.7387 of 1976 (Balwant Singh and another V. State of Punjab and others). The writ petition was dismissed vide judgement dated 12.5.1980 upholding the legality of the acquisition proceedings. However, the Samadh and the construction raised by Dera Ram Bagh were ordered to be released from acquisition.

Disappointed with the result of the aforementioned writ petition, Pritam Dass, devised a fresh strategy to thwart the acquisition. He divided the vacant land, into plots and sold them by executing registered lease deeds. The lessees filed CWP No.11673 of 1995, arraying Pritam Dass as respondent no.5 and praying that as the Improvement Trust had not taken possession, their lands be released from acquisition. This writ petition was dismissed vide order dated 8.7.1996.

Thereafter,the Improvement Trust. served a notice dated 27.1.1995 directing Pritam Dass Mohtmin to desist from raising any construction. Instead of complying with the notice, Pritam Dass filed the present writ petition, impugning the acquisition proceedings, by asserting that the land had not vested in the Improvement Trust, as it failed to take possession.

CWP 11772 of 2005 has been filed by a lessee from Pritam Dass. The petitioner, who was served with a notice, asserts that Pritam Dass leased out a plot to him for 99 years. The petitioner has constructed a

house,with the sanction of the Municipal Committee.

Counsel for the petitioners contend that land in dispute belongs to Dera Ram Bagh and is necessary to accommodate the congregation that assembles to pay obeisance at this 150 years old Samadh. Despite the award having been pronounced on 1.5.1976, the Improvement Trust has not taken possession and, therefore, the land has not vested in the Improvement Trust and continues to be owned by the petitioner. It is further submitted that as per instructions dated 28.12.1979, issued by the Government of Punjab, the Improvement Trust was required to take possession within an year of the award. As the Improvement Trust has not taken possession till date, the proceedings for acquisition have lapsed. To fortify the aforementioned assertion, the petitioner places reliance upon judgements of this Court reported as **Ranjit Singh Sethi and others V. State of Punjab and others,** 1988(2) P.L.R. 125, and I**qbal Singh Gill and others V. State of Punjab and others,** 1988(1) P.L.R. 575, wherein proceedings for acquisition were quashed as the Improvement Trust failed to take possession within one year of the award. Reliance is also placed upon other judgements, namely; **Bhatinda Improvement Trust V. Balwant Singh and others,** 1993(1) R.R.R. 182.

As regards the dismissal of CWP No.7387 of 1976, counsel for the petitioner submits that though the petitioner was arrayed as petitioner no.2, reference thereto was inadvertently omitted, while filing the present petition. It is further submitted that these proceedings are based upon a fresh cause of action, that arose after the dismissal of the aforementioned writ petition, namely, the failure of the Improvement Trust to take possession.

CWP No.11772 of 2005. Counsel for the petitioner contends that Pritam Dass Mohtmin executed a deed, leasing out a plot for a period of 99 years. The petitioner constructed a house after his building plans were sanctioned by the Municipal Committee. As the Improvement Trust has not taken possession, the acquired land had not vested in the Improvement Trust and therefore, the notice requiring the petitioner to stop construction was without jurisdiction.

Counsel for the respondents, on the other hand, assert that these petitions are an abuse of the process of law. Pritam Dass Mohtmin (the petitioner in CWP No.1365 of 2007) has concealed the fact that he filed CWP No.7387 of 1996. In para 12 of the writ petition, the petitioner refers to the dismissal of this writ petition but dishonestly avers that the writ petition was filed by one Balwant Singh, concealing his participation as petitioner no.2 in the aforementioned writ petition. It is also submitted that in 1994, the petitioner leased out, the acquired land to (1) Balraj Singh son of Hardev Singh (2) Raghbir Singh son of Bhag Singh, (3)Vijay Kumar Sharma son of Khushi Ram (4)Amrik Singh son of Arjan Singh (5) Miss Charanjit Kaur d/o Pritam Singh (6) Ajmer Singh son of Karta Singh (7) Mohinder Singh son of Kartar Singh (8) Satya Rani wife of Rattan Singh (9) Bachittar Singh son of Ujagar Singh (10) Arjan Singh son of Maghar Singh & (11) Harvinder Kaur wife of Balbir Singh. These lessees filed CWP No.11673 of 1995, alleging that as the Improvement Trust had not taken possession, the acquisition proceedings be quashed.

This writ petition was dismissed on 8.7.1996 upholding the acquisition proceedings and negating the assertion that the Improvement Trust had not taken possession. It was also held that the petitioners could

not claim any rights to impugn acquisition proceedings, merely because they were in possession of unutilised land, belonging to the Improvement Trust. It is also held that Pritam Dass, who was arrayed as Respondent No.5, had no right to lease out the land. It is further submitted that CWP No.11772 of 2005 has been filed by another lessee, claiming a similar relief as was declined in the aforementioned writ petition.

As regards the question of possession, it is submitted that the award was pronounced on 1.5.1976. The Improvement Trust has taken over possession and executed the scheme. The completed portion of the scheme has been handed over to the Municipal Committee. The land in dispute remained vacant and could not be developed as Pritam Dass initiated a barrage of litigation. The plea that the Improvement Trust did not take possession has already been considered and decided against the petitioners in CWP No.11673 of 1995. Pritam Dass and the lessee are in unauthorised possession of vacant land and have no right to maintain these petitions. As regards the judgements relied upon by the petitioner, namely; **Ranjit Singh Sethi and others V. State of Punjab and others,** and I**qbal Singh Gill and others V. State of Punjab and others,** (supra), it is submitted that the instructions referred to in these judgements, requiring Improvement Trusts to take possession within one year of the award were withdrawn on 3.3.1980 as they were contrary to the Act. The judgement in **Iqbal Singh Gill's case (supra)** was explicitly overruled by a Division Bench of this Court in a judgement reported as **Tara Paul V. State of Punjab**, 1995(2) PLR 129.

As regards payment of compensation it is submitted that compensation was deposited with the Land Acquisition Collector in the year

1976, as there was some litigation between Pritam Dass Mohtmin and one Sewa Dass over the right/title, to receive compensation, in RSA No.1700 of 1976, titled as "Sewa Dass V. Pritam Dass and another". The RSA was eventually dismissed as infructuous, on the statements made by parties, with liberty to get their individual rights determined in a separate suit. However, till date, neither party has approached the Trust or the Land Acquisition Collector for compensation.

We have heard learned counsel for the parties and perused the paper book.

Challenge,to the acquisition proceedings was repelled and their legality upheld in CWP 7387of 1976, decided on 12.5.1980. Pritam Dass Mohtmin, who was petitioner no.2 in that writ petition has cleverly tried to conceal this fact. The averments in para 12 of the writ petition, reproduced herein below bear out the aforementioned conclusion and falsify the petitioner's assertion that reference to the petitioner's participation in CWP No.7387 of 1976 was inadvertently omitted :-

> "That the petitioner came to know that one Mr.Balwant Singh filed a petition in which the government gave a undertaking that the constructed area of the Dera shall not be taken in possession while another portion which is lying vacant and in which the Samadh is existing will not be taken by the Trust and shall be kept intact. This built-up area will not be taken over by the Trust while the vacant portion will be acquired. The built-up area of the Samadh and land will be adjusted in the scheme. This undertaking was given in CWP No.7387 of 1980 vide its

order dated 12.5.1980."

The averment that CWP No.7387 of 1976 was filed by Balwant Singh is categoric. It is, therefore, apparent that Pritam Dass Mohtmin, the petitioner in CWP No.1365 of 1997, dishonestly and wilfully attempted to conceal his participation as petitioner no.2 in CWP No.7387 of 1976. The aforementioned concealment is in itself sufficient to dismiss the writ petition.

Another significant fact that merits mention is that after failing in his attempt to impugn the acquisition proceedings, Pritam Dass Mohtmin devised a fresh strategy to thwart acquisition proceedings and leased out the vacant land. These lessees filed CWP No.11673 of 1995, arraying Pritam Dass as respondent no.5 by pleading that as the Improvement Trust had not taken possession, the proceedings for acquisition were liable to be quashed. The aforementioned writ petition was dismissed by an Hon'ble Division Bench, vide order dated 8.7.1996, by observing as follows :-

> "In view of the dismissal of the previous writ petition, the present writ petition, in our considered view is not maintainable, particularly when the petitioners are not the owners of the land which stands acquired. They are claiming themselves to be the lessees for a period of 99 years. They have averred in paragraph-3 of the writ petition that respondent no.5 carved out small plots of 200 square yards and leased out the same by registered sale deeds for 99 years to the petitioners in the year 1994. No lease deed has been attached with the writ petition. Respondent no.5 who lost the petition in the High Court had no locus-standi to lease out the disputed land to the

petitioner. The area covered by the Samadh as has been argued by the counsel for the Improvement Trust has already been left. Consequently, the Improvement Trust was right in issuing directions vide Annexure P-6 to the original owner Pritam Dass Mahant, to stop the construction. It deserves to be noted that respondent no.5 did not challenge the notice Annexure P-6 but the same has been challenged by the alleged lessees on the basis of registered sale deeds which have even not been produced by the petitioners before us. The ground of release of the built up area of Samadh does not appear to be genuine as Samadh area could not be put to any meaningful use by alleged lessee. It appears to us that respondent no.5 having remained unsuccessful in the writ petition has put up the alleged lessees by transferring some vacant area which might have not been utilised by the Improvement Trust as yet. In any case, no interference in writ jurisdiction at the instance of alleged lessees or the original owner is called for. Consequently, the writ petition is ordered to be dismissed at the stage of motion hearing."

As is apparent from the above extract,it was held that Pritam Dass Mohtmin had no locus standi to lease out the disputed land. It was also held that Pritam Dass Mohtmin (referred to as respondent no.5) having remained unsuccessful in the first writ petition had put up the alleged lessees by transferring vacant land, which may not have been utilised by the Improvement Trust, as yet. Thus, in essence, the question with respect to

the legality of the acquisition, the nature of the lease deeds and the possession of the Improvement Trust, was decided against the lessees, who claimed title, to the land, through Pritam Dass Mohtmin.

After having failed in the aforementioned writ petitions, Pritam Dass Mohtmin filed the present writ petition, alleging that as the Improvement Trust had not taken possession, acquisition proceedings be quashed. In our considered opinion, this writ petition is an abuse of the process of law and an attempt to perpetuate the petitioner's unauthorised possession of acquired land and, therefore, must meet with failure. The award was pronounced in 1976. The legality of acquisition proceedings, was upheld in CWP 7387 of 1976 decided on 12.5.1980. The plea raised by the lessees, that the Improvement Trust had not taken possession, was negatived in CWP No.11673 of 1995 decided on 8.7.1996, thus, setting at rest all questions as to the legality of the acquisition and the vesting of the acquired land in the Improvement Trust. The petitioner though aware and a party to the dismissal of these petitions, persisted in his attempt to oust the Improvement Trust and once again laid challenge to the acquisition proceedings. We deprecate the petitioners conduct and record our displeasure. As the disputes raised in these petitions have been finally settled, we find no reason to entertain these writ petitions.

As regards Government instructions dated 28.12.1979, suffice it to say that these instructions, are contrary to the Improvement Trust Act. and were withdrawn by the Government on 3.3.1980. The judgement in **Iqbal Singh Gill's case (supra),** was explicitly reversed by a Division Bench of this Court in a judgement reported as **Tara Paul V. State of Punjab (supra).** As the judgement in Ranjit Singh's case was based upon

the ratio in Iqbal Singh's case, it stands impliedly overruled.

The judgements **Bhatinda Improvement Trust V. Balwant Singh and others** and **Sube Singh and others V. State of Haryana and others,(supra)** relied upon by the petitioner are irrelevant, as they do not deal with the points in issue.

As regards the submission that compensation has not been received it has been rightly submitted by the Improvement Trust that on account of a dispute between Pritam Dass Mohtmin and Sewa Dass, the amount stands deposited with the Land Acquisition Collector. The petitioner, therefore, is free to withdraw the compensation amount in accordance with law.

As regards CWP No.11772 of 2005, the petitioner claims to be a lessee from Pritam Dass Mohtmin and prays that as he has constructed a house, after obtaining permission from the Municipal committee, the proceedings for acquisition be quashed. We express our inability to accept the aforementioned contention as a similar writ petition, namely; CWP No.11673 of 1995, filed by similarly situated lessees from Pritam Dass, raising identical pleas has already been dismissed vide order dated 8.7.1996.

In view of what has been stated above, we hold that the land in dispute stands validly acquired and vested in the Improvement Trust. The fact that the land remained vacant and the petitioners occupied it illegally would not confer any right upon the petitioners with respect to the acquired land.

The writ petitions, are accordingly dismissed, with no order as to costs.

(RAJIVE BHALLA)
JUDGE

18.12.2007
GS

(UMA NATH SINGH)
JUDGE